

**Before the
Federal Communications Commission
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Request for Review |) | |
| |) | |
| St. Margaret's School |) | File No. SLD-368113 |
| Middle Village, New York |) | |
| |) | |
| Schools and Libraries Universal Service |) | CC Docket No. 02-6 |
| Support Mechanism |) | |

ORDER

Adopted: April 21, 2005

Released: April 22, 2005

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by St. Margaret's School, Middle Village, New York (St. Margaret's).¹ St. Margaret's seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) denying St. Margaret's Funding Year 2003 application for discounted services under the schools and libraries universal service support mechanism on the ground that St. Margaret's violated the Commission's competitive bidding requirements.² For the reasons set forth below, we deny St. Margaret's Request for Review and affirm SLD's denial of St. Margaret's application.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.⁴ In accordance with the Commission's rules, an applicant must file with SLD, for posting to its website, an FCC Form 470 requesting services.⁵ The applicant must wait 28 days before entering into an agreement

¹Letter from Donna Menna, St. Margaret's School, to Federal Communications Commission, filed October 28, 2004 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. 54.719(c).

²Letter from Schools and Libraries Division, Universal Service Administrative Company, to Donna Menna, St. Margaret's School, dated October 12, 2004 (Administrator's Decision on Appeal).

³47 C.F.R. §§ 54.502, 54.503.

⁴47 C.F.R. §§ 54.504, 54.511(c).

⁵See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant.⁶

3. The FCC Form 470 describes the applicant's planned service requirements, as well as other information regarding the applicant and its competitive bidding process that may be relevant to the preparation of bids.⁷ Applicants are required, in Item 6 of the FCC Form 470, to name a person whom prospective service providers may contact for additional information (Item 6 contact person) about the application.⁸ In addition, in Item 11 of the FCC Form 470, applicants may, at their option, name another contact person (Item 11 contact) "who can provide additional technical details and other information about [the applicant's] services to vendors seeking to bid."⁹ This need not be the same person listed as the Item 6 contact person for the entire application.

4. In the *Mastermind Order*, the Commission held that, where an FCC Form 470 lists a contact person who is an employee or representative of a service provider who participates in the competitive bidding process, the FCC Form 470 is defective.¹⁰ The Commission observed that the contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested.¹¹ On this basis, the Commission found that when an applicant delegates that power to an entity that also participates in the bidding process as a prospective service provider, the applicant impairs its ability to hold a fair competitive bidding process.¹² Thus, the Commission concluded that a competitive bidding violation occurs "when a service provider that is listed as the contact person on the FCC Form 470 also participates in the competitive bidding process as a bidder."¹³ In such cases, the Administrator must deny any funding request based on that FCC Form 470.¹⁴

5. Upon review of the record, we conclude that SLD correctly denied St. Margaret's request for support.¹⁵ The record shows that St. Margaret's made three funding requests in its Funding Year 2003

⁶47 C.F.R. § 54.504(c); *see also* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁷47 C.F.R. § 54.504(b).

⁸FCC Form 470, Item 6; Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (Form 470 Instructions), at 7.

⁹FCC Form 470, Item 11; Form 470 Instructions at 10.

¹⁰*Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SPIN-143006149, CC Docket No. 96-45, 16 FCC Rcd 4028 (2000) (*Mastermind Order*).

¹¹*Id.* at 4033.

¹²*Id.*

¹³*Id.*

¹⁴*Id.*, at 4032, para. 9 ("to the extent a [service provider] employee was listed as the contact person on the FCC Form 470 that initiated a competitive bidding process in which [the service provider] participated, such Forms 470 were defective and violated our competitive bidding requirements. In the absence of valid Forms 470, the requests for support were properly denied.")

¹⁵Administrator's Decision on Appeal at 2.

application that were supported by FCC Form 470 No. 174159999417132.¹⁶ One of these requests sought discounts on Internet services to be provided by Solar Industrial Corp., SPIN 143016303 (Solar).¹⁷ In Item 11 of St. Margaret's Form 470, St. Margaret's listed Richard Fogal, a representative of Solar, as the contact person.¹⁸ SLD denied St. Margaret's Funding Year 2003 application, finding that service provider contact information was included on the supporting Form 470, in violation of the Commission's competitive bidding rules.¹⁹ In its Request for Review, St. Margaret's states that naming Mr. Fogal as the contact person was a mistake and based on the assumption that the Form 470 requested the name of the "contract person."²⁰ St. Margaret's maintains that Mr. Fogal had no influence in completing St. Margaret's Form 470.²¹ We do not find this to be a sufficient basis to grant the instant Request for Review.

6. As discussed above, a competitive bidding violation occurs when a representative of a service provider participating in the bidding process is named as a contact person on the Form 470.²² The Commission has determined that this reasoning applies to contact persons named in Item 11 of the Form 470 as well as to contact persons named in Item 6.²³ Item 11 contacts are named to provide technical and other information regarding the services requested, and thus are in a position to exert precisely the kind of influence over the process that concerned the Commission in the *Mastermind Order*.²⁴ Although naming an Item 11 contact is optional, once the option is exercised, the fairness concerns exist to the same degree as if naming the Item 11 contact had been mandatory.

7. By naming a Solar representative as the contact in Item 11 of its Form 470, St. Margaret's surrendered control of the bidding process to a service provider that not only participated in the bidding process, but also was awarded a service contract for at least one FRN.²⁵ As a result, St. Margaret's Form 470 No. 174159999417132 was defective and all FRNs in St. Margaret's Funding Year 2003 application referencing such Form must be denied.²⁶ The Wireline Competition Bureau has consistently denied requests for review by applicants that have violated the Commission's competitive bidding rules by

¹⁶FCC Form 471, St. Margaret's School, filed February 3, 2003 (St. Margaret's Form 471); FCC Form 470, St. Margaret's School, filed September 30, 2002 (St. Margaret's Form 470).

¹⁷St. Margaret's Form 471. These requests are identified by Funding Request Numbers (FRNs) 1003309, 1003345, and 1003443.

¹⁸St. Margaret's Form 470, Item 11.

¹⁹Administrator's Decision on Appeal at 2.

²⁰Request for Review at 1 (emphasis added).

²¹Request for Review at 1.

²²*Mastermind Order*, 16 FCC Rcd at 4033, para. 10.

²³*Request for Review by Consorcio De Eschuelas Y Bibliotecas De Puerto Rico, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-228216, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 13624 (Wireline Comp. Bur. 2002).

²⁴*Id.* at 13627; *see also supra*, para. 4.

²⁵FRN 1003443 is a request for Internet access being provided by Solar Industrial Corp. *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Donna Menna, St. Margaret's School, dated May 27, 2003.

²⁶*See Mastermind Order*, 16 FCC Rcd at 4033, para. 10.

including service provider contact information on their Forms 470.²⁷ In light of the thousands of applications that SLD must review and process each year, we find that it is administratively necessary to require applicants to provide accurate information on their applications and comply with program rules and procedures.²⁸ We therefore deny St. Margaret's Request for Review.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by St. Margaret's School, Middle Village, New York, on October 28, 2004, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Vickie S. Robinson
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

²⁷See, e.g., *Request for Review by Consorcio De Eschuelas Y Bibliotecas De Puerto Rico, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-228216, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 13624 (Wireline Comp. Bur. 2002); *Request for Review by Dickinson County Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-239477, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 9410 (Wireline Comp. Bur. 2002).

²⁸See *Request for Review by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, 25612-13, para. 8 (Com. Car. Bur. 2000).